

By: Turner

H.B. No. 552

A BILL TO BE ENTITLED

AN ACT

relating to electric market safeguards after the expiration of the price to beat.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 39, Utilities Code, is amended by adding Sections 39.2023, 39.2024, and 39.2025 to read as follows:

Sec. 39.2023. MARKET-BASED PRICE. (a) This section applies only to an affiliated retail electric provider in relation to which the commission determines that less than 60 percent of the electric power consumed by residential customers in the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is committed to be served by nonaffiliated retail electric providers on the date this section takes effect.

(b) The commission shall require an affiliated retail electric provider to make electricity available to residential customers of the affiliated transmission and distribution utility at a market-based price set by the commission under this section. The provider shall make the market-based price available until the date the commission determines that 60 percent or more of the electric power consumed by residential customers in the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is committed to be served by

1 nonaffiliated retail electric providers.

2 (c) The commission shall set the market-based price for the  
3 affiliated retail electric provider at an amount equal to the price  
4 to beat made available to residential customers by the provider on  
5 December 31, 2006, adjusted to reflect the averaged cost of natural  
6 gas on the second day before the date the market-based price is set.  
7 Except as otherwise provided by this section, the commission shall  
8 determine the initial market-based price and any subsequent  
9 adjustments to that price in accordance with the rules and  
10 practices adopted by the commission in relation to determining the  
11 price to beat for residential service under Section 39.202.

12 (d) The affiliated retail electric provider shall make  
13 public its market-based price in a manner that provides adequate  
14 notice as determined by the commission.

15 (e) An affiliated retail electric provider may request that  
16 the commission adjust the fuel factor previously established under  
17 Section 39.202(b) and adjusted under Subsection (c) not more than  
18 twice a year if the provider demonstrates that the fuel factor  
19 established does not adequately reflect significant changes in the  
20 market price of natural gas and purchased energy used to serve  
21 retail customers.

22 (f) The commission, on its own motion or on the motion of the  
23 office or a municipality in the affiliated transmission and  
24 distribution utility's certificated service area, may, at any time,  
25 review and adjust the affiliated retail electric provider's fuel  
26 factor to ensure that the factor accurately reflects the cost of  
27 natural gas and purchased energy used to serve retail customers.

1        (g) At least once each state fiscal quarter, the commission  
2 shall determine the applicability of this section to an affiliated  
3 retail electric provider that was not subject to this section  
4 during the previous state fiscal quarter.

5        Sec. 39.2024. MARKET MONITORING. (a) Each state fiscal  
6 quarter, the commission shall survey each transmission and  
7 distribution service area in which customer choice has been  
8 introduced to determine whether a competitive retail market exists  
9 in that area.

10       (b) In determining whether a competitive retail market  
11 exists, the commission may consider any relevant factor, including:

12           (1) the number of retail market participants serving  
13 each customer class;

14           (2) the source of purchased power for each market  
15 participant by customer class;

16           (3) the retail price of electricity for each customer  
17 class;

18           (4) the cost of electricity for each customer class;

19           (5) whether the cost of electricity accurately  
20 reflects the costs of purchasing power; and

21           (6) the degree of market power in the relevant  
22 generation market.

23       (c) If the commission determines that the retail market is  
24 not competitive, the commission may take any action necessary to  
25 make the market competitive that is consistent with the public  
26 interest, including:

27           (1) requiring an affiliated retail electric provider

1 not otherwise subject to Section 39.2023 to make electricity  
2 available to residential customers in the market at a market-based  
3 price set by the commission in accordance with Section 39.2023;

4 (2) requiring all retail electric providers selling  
5 electricity in the market to make electricity available to  
6 residential customers in the market at a market-based price set by  
7 the commission in accordance with Section 39.2023;

8 (3) ordering the construction of additional  
9 transmission or distribution facilities; and

10 (4) ordering the sale of generation assets to a  
11 nonaffiliated person.

12 Sec. 39.2025. MARKET REVIEW BASED ON PRICE OF ELECTRICITY.

13 (a) The commission, on its own motion, may conduct a review of a  
14 transmission and distribution service area in which customer choice  
15 has been introduced to determine if the retail price of electricity  
16 sold to residential customers in all or part of that area is  
17 unreasonably high or a threat to public safety. The commission  
18 shall conduct the review if the commission receives a request for  
19 the review from:

20 (1) the office;

21 (2) a municipality in the service area; or

22 (3) a standing committee of the senate or house of  
23 representatives that has primary jurisdiction over the commission.

24 (b) While the commission conducts the review, the  
25 commission may cap the retail price of electricity sold to  
26 residential customers in all or part of the transmission and  
27 distribution service area at a price the commission determines is

1 appropriate. If the commission imposes a cap, the commission shall  
2 impose the cap on all retail electric providers in the capped area  
3 that sell electricity to residential customers.

4 (c) If, after the review, the commission determines that the  
5 retail price of electricity sold to residential customers in all or  
6 part of the transmission and distribution service area is  
7 unreasonably high or a threat to public safety, the commission may  
8 take any action that is consistent with the public interest,  
9 including extending the cap or taking an action described by  
10 Section 39.2024(c).

11 SECTION 2. (a) Not later than the 30th day after the date  
12 this Act takes effect, the Public Utility Commission of Texas shall  
13 make the determination required by Section 39.2023, Utilities Code,  
14 as added by this Act, for each affiliated retail electric provider  
15 in this state.

16 (b) Not later than the 60th day after the date this Act takes  
17 effect, the Public Utility Commission of Texas shall set the  
18 market-based price for each affiliated retail electric provider  
19 that the commission determines is subject to Section 39.2023,  
20 Utilities Code, as added by this Act.

21 (c) The Public Utility Commission of Texas shall conduct the  
22 first survey required by Section 39.2024, Utilities Code, as added  
23 by this Act, not later than January 1, 2008.

24 SECTION 3. This Act takes effect July 1, 2007, if it  
25 receives a vote of two-thirds of all members elected to each house,  
26 as provided by Section 39, Article III, Texas Constitution. If this  
27 Act does not receive the vote necessary for effect on that date,

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1    this Act takes effect September 1, 2007.